

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

M.CR.C NO.37635 OF 2024

RADHE SHYAM MEWADA

Vs.

THE STATE OF MADHYA PRADESH,

APPEARANCE :

SHRI ANIRUDDH KUMAR MISHRA – ADVOCATE FOR APPELLANT

BY MS. NUPUR DHAMIJA – DY. GOVT. ADVOCATE FOR STATE.

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Reserved on *31.08.2024*

Pronounced on *20.09.2024*
.....

ORDER

This petition under Section 528 of BNSS, 2023 has been filed seeking quashment of FIR No.147/2024, registered at P.S. Mandi, District Sehore for commission of offence under Section 294, 323, 506,307 and 325 of IPC and subsequent proceedings of RCT No.639/2024.

2. It is worth mentioning that in the case in hand charge sheet has already been filed and petitioner is facing the trial.

3. Challenging the F.I.R lodged against the petitioner, it is submitted by learned counsel for the petitioner that on 19.04.2024, Ajab Singh Mewada had lodged F.I.R against Sunil and his two friends about causing voluntary hurt to him, his son Rahul and nephew Hariom Mewada. Petitioner was named as witness in that case. It is submitted that as a counter blast, Sunil Mewada, who is accused in Crime No.145/24 dated 19.04.2024, has lodged F.I.R.No.147/2024 against the present applicant and others on 21.04.2024 almost after two days of the incident about causing injuries to him, his father Dault Singh, Vinod, Rohit and others. The present petitioner has been named in the F.I.R only because he was named as witness in the earlier F.I.R lodged by Ajab Singh Mewada. Petitioner has been named as accused only with an intention to deter him not to depose against accused Sunil and others. Thus, the F.I.R has been lodged by way of counter-blast and smacks of malafides. Therefore, it is prayed that F.I.R and charge sheet filed in the case against the present petitioner being unwarranted and malafide, be quashed.

4. On the other hand, learned counsel for the State has vehemently opposed the quashment of FIR and charge sheet and has submitted that a named F.I.R has been lodged against the applicant and others and the allegations are of causing simple and grievous voluntary hurt to the complainant Sunil, his father and others with an intention to kill him.

Thus, a cognizable offence has been committed by them and after investigation charge sheet has been filed against the petitioner and others for commission offences mentioned above. Hence, F.I.R and charge sheet cannot be quashed. It is further submitted that petition filed by petitioner is misleading and prayed for dismissal of the same.

5. I have heard learned counsel for the parties and perused the record.

6. Before considering the rival contention putforth by learned counsel for the parties, this court would like to consider the scope of interference under section 528 of BNSS,2023 (section 482 of Cr.P.C).

7. The Hon'ble Apex Court in ***HMT Watches Limited Vs. M.A. Abida- (2015) 11 SCC 776*** has held that inherent powers under section 482 of the Cr.P.C cannot be extended for determining question of facts. It is only for the trial court to determine the disputed questions of fact after examining the evidence on record and interference by this court with regard to factual questions is impermissible in law.

8. The Hon'ble Apex court in the case of ***Amit Kapoor Vs. Ramesh Chander- (2012)9 SCC 460*** has held as under :-

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such

jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in

force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

27.14. *Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15. *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.*

[Ref. State of W.B. v. Swapan Kumar Guha Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre; Janata Dal v. H.S. Chowdhary; Rupan Deol Bajaj v. Kanwar Pal Singh Gill; G. Sagar Suri v. State of U.P.; Ajay Mitra v. State of M.P.; Pepsi Foods Ltd. v. Special Judicial Magistrate; State of U.P. v. O.P. Sharma; Ganesh Narayan Hegde v. S. Bangarappa; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.; Shakson Belthissor v. State of Kerala; V.V.S. Rama Sharma v. State of U.P.; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu; Sheonandan Paswan v. State of Bihar; State of Bihar v. P.P. Sharma; Lalmuni Devi v. State of Bihar; M.Krishnan v. Vijay Singh; Savita v. State of Rajasthan and S.M. Datta v. State of Gujarat.]

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction*

under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in Madhavrao Jiwajirao Scindia was reconsidered and explained in two subsequent judgments of this Court in State of Bihar v. P.P. Sharma and M.N. Damani v. S.K. Sinha. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent."

9. Hon'ble Apex Court in the case of ***Mohd. Akram Siddiqui v. State of Bihar*** reported in (2019) 13 SCC 350 has held as under :-

"5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered."

10. The Supreme Court in the case of ***CBI v. Arvind Khanna*** reported

in (2019) 10 SCC 686 has held as under :

"17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for."

11. Hon'ble Apex Court in the case of *State of M.P. Vs. Kunwar Singh*

by order dated 30.06.2021 passed in Cr.A.No.709/2021 held as under :-

"8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia....."

12. The Hon'ble Apex Court in the case of *Neeharika Infrastructure*

Pvt. Ltd. Vs. State of Maharashtra -AIR 2021 SC 1918 has held as under :-

"80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of

investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under :

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the

jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the

power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or

is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

13. Adverting to the facts of present case, it is apparent that the allegation against the petitioner is that he alongwith others assaulted complainant Sunil Mewada and others and caused injuries to them. After investigation charge sheet for commission of offence under section 325, 307 and other relevant sections of I.P.C has been filed against them. The contention of learned counsel for the petitioner that F.I.R has been lodged as a counter blast because he is witness in the F.I.R lodged earlier by Ajab Singh Mewada, is a disputed question of fact because named F.I.R has been lodged against the petitioner and other co-accused persons. The question whether petitioner alongwith other co-accused caused grievous and life threatening injuries to Sunil Mewada and others or not is a question of fact which can be decided only after recording of the evidence of witnesses. *Prima facie*, the allegation made against the present applicant and other co-accused makes out a cognizable offence and the

contention that he has been maliciously named in the F.I.R., is a question of fact which can be decided only after recording of evidence of the witnesses. It cannot be overlooked that lot of disputed questions of fact are involved in the case which cannot be decided by this court while exercising powers under section 482 of Cr.P.C.

14. It is well established principle of law that this court while exercising its power under section 482 of Cr.P.C cannot decide the correctness of the allegations as same can be decided only after recording of the evidence. At this stage while exercising powers under section 482 of Cr.P.C, the court cannot go to the extent of deciding as to whether F.I.R in question and charge sheet filed pursuant thereto is a counter blast of any previous F.I.R lodged by suspected accused or not. On perusal of two F.I.Rs filed by the petitioner alongwith the petitioner, it is apparent that the allegations as well as counter allegations have been made against each other by the parties and charge sheets have been filed. Therefore, at this stage, this court cannot hold that F.I.R in question and charge sheet filed pursuant thereto, has been lodged with malafide intention or by way of counter blast.

15. In the light of above discussion, this court is of the considered opinion that it cannot delve into disputed questions of fact and examine the probable defence taken by the petitioner in the present petition while

invoking the power under section 482 of the Cr.P.C. Consequently, this petition under Section 528 of BNSS/482 of Cr.P.C. being devoid of merits is **dismissed**.

(DINESH KUMAR PALIWAL)

JUDGE

MKL